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Human Rights Committee

Concluding observations on the third periodic report of the Czech Republic

Addendum

Information received from the Czech Republic on follow-up to the concluding observations*

[Date received: 3 November 2014]

Introductory remarks

1. Based on the consideration of the third periodic report on the implementation of the International Covenant on Civil and Political Rights (CCPR/C/CZE/3) (hereafter "the Report" and "the Covenant") before the Human Rights Committee (hereafter "the Committee") on 16 and 17 July 2013, the Committee adopted the concluding observations (CCPR/C/CZE/CO/3). In paragraph 23 of the concluding observations it called on the Czech Republic to provide within one year relevant information on its implementation of the Committee's recommendations contained in paragraphs 5, 8, 11 and 13 (a). The present statement, submitted by the Czech Republic, includes the relevant information.

Information on the implementation of recommendation No. 5

2. In the Czech Republic the institution that is closest to an independent institution for the protection and promotion of human rights is the Public Defender of Rights, whose task is to contribute to the protection of fundamental rights and freedoms. The scope and powers of the Defender are regulated by a special law.[1] His/her main task is to ensure that the Government's performance is in accordance with the law and principles of good governance, which should contribute to the protection of fundamental rights and freedoms.[2] The Defender cannot directly intervene in the activities of administrative bodies or abolish or alter their decisions. However, he/she may perform independent investigations, both at

* The present document is being issued without formal editing.

[1] Act No. 349/1999 Sb., Act on the Public Defender of Rights, as amended.

[2] § 1, paragraph 1, of the Act on the Public Defender of Rights.

the instigation of any complainant or on his/her own initiative.[3] In his/her conclusions, he/she may then make recommendations[4] to correct errors and deficiencies and require the authorities to fulfil them. The authorities are obliged to cooperate with the Defender, provide him/her with all relevant information, allow him/her access to all supporting documents and sources of information[5] and inform him/her of their remedial measures.[6] Otherwise the Defender informs the superior authority, the Government or the public by disclosing the conclusions and via press releases.[7]

3. The Defender also supervises places of detention of persons deprived of their personal liberty under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[8] The Defender also acts as the equality body and in this capacity he/she conducts investigations in matters of discrimination, provides methodological assistance to victims when filing petitions to initiate discrimination proceedings as well as with other steps to protect their rights, conducts research, publishes reports and makes recommendations on issues related to discrimination.[9] The Defender also monitors the expulsion of aliens under European Union law in terms of handling and protection of their rights during the expulsion procedures.[10]

4. The Defender is elected for a period of 6 years by the Chamber of Deputies,[11] to which he/she is responsible.[12] He/she is independent of any other authority[13] and has his/her own office, which is financially independent, operates permanently and fulfils his/her legal duties.[14] The Defender also regularly informs the Chamber of Deputies of his/her activities and presents quarterly and annual reports,[15] as well as information on cases where no redress has been achieved.[16] The Defender also publishes all this and more information about his/her activities on his/her website.[17] On the basis of his/her activities the Defender may also formulate recommendations for amendments to legislation, government policies or administrative procedures subsequently submitted to the Government and the Parliament.[18] The Defender also often analyses proposed government policies and legislative measures already during their preparation and comments on them in terms of protection of human rights. The Defender also collaborates with academic institutions and non-governmental organizations. He/she also organizes specialized conferences on the topics in his/her agenda and also provides expert opinions and guides, which are also available on his/her website. The Defender also conducts research in matters within his/her competence (e.g. discrimination).

5. It follows from the above mentioned that the Defender already fulfils the vast majority of the Paris Principles. His/her basic competences focused on the performance of public administration in accordance with the law and principles of good governance allow

[3] § 9 et seq., Act on the Public Defender of Rights.
[4] § 18 and 19 of the Act on the Public Defender of Rights.
[5] § 15 of the Act on the Public Defender of Rights.
[6] § 20, paragraph 1, of the Act on the Public Defender of Rights.
[7] § 20, paragraph 2, of the Act on the Public Defender of Rights.
[8] § 1, paragraphs 3 and 4, and § 21a of the Act on the Public Defender of Rights.
[9] § 5, section 1, and § 21b of the Act on the Public Defender of Rights.
[10] § 1, paragraph 6, of the Act on the Public Defender of Rights.
[11] § 2, paragraph 1, of the Act on the Public Defender of Rights.
[12] § 5, paragraph 2, of the Act on the Public Defender of Rights.
[13] § 5, paragraph 1, of the Act on the Public Defender of Rights.
[14] § 25 and 26 of the Act on the Public Defender of Rights.
[15] § 23, paragraph 1, of the Act on the Public Defender of Rights.
[16] § 24, paragraphs 1 and 2, of the Act on the Public Defender of Rights.
[17] § 23, paragraph 2, of the Act on the Public Defender of Rights.
[18] § 22, paragraphs 1 and 2, of the Act on the Public Defender of Rights.

him/her to monitor the observance of fundamental rights under the Charter of Fundamental Rights and Freedoms and international conventions. Special powers of protection against ill-treatment and discrimination and supervision of forced repatriations suitably complement these competences. The Defender also cooperates with the Government and Parliament and présents both legislative and other recommendations to address human rights issues. The Defender also expresses his/her opinion on most government legislative and non-legislative proposals regarding the protection of fundamental rights. Last but not least, he/she works closely with experts and representatives of the civil sector and uses their experience in his/her work.

6. Based on a long experience with the functioning of Defender's institution, the Government is preparing an amendment to the Law on the Public Defender of Rights this year, which should improve his/her competence in the field of human rights. The amendment aims to simplify and streamline the Defender's activities to better protect human rights. The institution shall become more accessible to the complainants and its work shall become less formalized and come closer to the role of a mediator between the complainant and the government authority or other entity which affected his/her rights. The Defender's procedures regarding the handling of complaints shall become less formalized and faster. These targets will also be complemented by the obligations of private subjects towards the Defender, which will consist mainly of providing the necessary information and other forms of cooperation in performing his/her duties.

7. To strengthen the human rights competences of the Defender, his/her competencies will be further expanded. The Defender shall be authorized to file a petition to the Constitutional Court for the annulment of a law or its provisions, if during the performance of his/her activities he finds out that the law or its provisions may be in conflict with the constitutional order, including the Charter of Fundamental Rights and Freedoms. Furthermore, the Defender will be authorized to fill in public action (*actio popularis*) in matters of discrimination and to demand an end to discriminatory behaviour and the restoration of the previous state. Both these authorizations will enable the Defender to use the experience from his/her activities, whether with anti-constitutional provisions that violate human rights or in cases with extensive or systemic discrimination that could not be effectively addressed by actions of individual victims.

8. Finally, the amendment proposes to entrust the Defender with independent monitoring of the implementation of the Convention on the Rights of Persons with Disabilities.[19] The Defender will monitor the fulfilment of the rights of persons with disabilities in all areas of life which the Convention regulates, on an equal basis with others. Monitoring the implementation of the rights of persons with disabilities shall be carried out by evaluating legislative and non-legislative proposals of the Government, the Parliament and local administrations and their policy documents. The Defender will also focus on active checking of the actual fulfilment of the rights of persons with disabilities in practice through research and investigations. Based on the obtained information, the Defender will be able to formulate recommendations to amend the legislation or the systemic approach, so that people with disabilities can truly enjoy their rights on an equal basis with others. In accordance with the Convention, people with disabilities shall be involved in monitoring[20] via a Defender's advisory body composed of their representatives. The advisory body will be acquainted with all the Defender's procedures and results regarding the monitoring will be able to comment them, submit their own proposals and actively participate in each monitoring step.

[19] See art. 33 of the Convention on the Rights of Persons with Disabilities.

[20] Art. 33, paragraph 3, of the Convention.

9. The current Defender is inclined to submit an application for accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

Information on the implementation of recommendation No. 8

10. During 2014 the Government began the preparation of the Campaign against Racism and Hate Crime[21] coordinated by the Agency for Social Inclusion, which operates under the Minister of Human Rights, Equal Opportunities and Legislation. The main goal of the campaign is to strengthen the social and economic cohesion at the national, regional and local level by improving socially inclusive policies and overall awareness about the issue of social exclusion and hate crime and promoting greater tolerance in the Czech society towards minorities and foreigners. The campaign focuses mainly on young people, pedagogic workers, representatives of cities and municipalities and police officers. Its primary aim is to defuse tensions in society and streamline the fight against hate violence. The campaign will take place in 2014–2016. The campaign's budget is about 40 million CZK. The campaign's impact will be evaluated in terms of efficiency of individual activities by comparing the attitudes of the target groups before and after the start of campaign activities.

11. The campaign will primarily include a national media campaign against racism and hate crime directed at young people aged 15–25 years, which should focus on informing about racism and hate crime and how to face them. This media campaign will use television and radio spots, the Internet, social networks and other communication tools attractive to the target group. The next step will be to spread good practice in socially excluded localities through interactive websites and information materials for local government representatives, public administration employees and other stakeholders in the process of social inclusion at the local level such as the Czech Police and municipal police, school principals and teachers, health professionals, NGOs and others.

12. The campaign will be accompanied by educational activities. The Northern Moravia and Usti regions were selected for the implementation of these activities as the persistently high rate of unemployment in these regions and the associated existential uncertainty leads to tensions between the social groups, including racist manifestations. Extremist attitudes and rising support for extremist movements and political parties proliferate among the population. Educational activities will take place in schools between teachers and pupils aged 10–15 years who are still forming their attitudes. The programmes will focus on understanding how to deal with racism and hate violence and bullying, including the preparation of teaching materials (film, methodology, etc.). Other educational activities are designed for the police in the regions towards a better understanding of the situation in socially excluded localities and increasing competences for the implementation of preventive measures and in particular to combat hate crime and violence. The campaign will also be accompanied by research on problems in socially excluded localities such as usury or migration of the poor and socially excluded persons with a view to proposing measures to prevent and combat these phenomena.

13. The media communication relevant to issues of inter-ethnic relations and coexistence in socially excluded localities is also important. The Government therefore tasked the Ministers of Labour and Social Affairs, Regional Development, Education, Youth and Sports and of the Interior to react through the media to emerging false

[21] During 2013, a campaign plan was developed and will be part of a three-year project funded by the European Economic Area/Norway.

information about the Roma and the activities and measures taken to combat the escalation of social tension.[22] Subsequently in March 2014 the Ministry of the Interior prepared in cooperation with the police the "Methodology of Media Communication in Order to Reduce Security Risks in Socially Excluded Localities". The methodology includes recommendations for police officers to be able to contribute via media communications to peace and good inter-ethnic coexistence between Roma and other minorities and the majority population. The police, in cooperation with the media, should monitor and actively refute emerging false information and myths that could give rise to unrest or greater escalation of these, such as false information regarding the Roma and members of other minorities or about the activities and actions of the police, work closely with the media to provide truthful and objective information about the work of the police and to provide timely media response to events, which may be spark social unrest. The basic principles of media communication of the Police of the Czech Republic are to not publish the ethnicity of the perpetrator or the victim and to not encourage prejudices and negative stereotypes in the medicalization of crime.

14. In accordance with international recommendations, the Czech Republic is preparing a new comprehensive Strategy for Roma Integration 2014–2020. One of the objectives of the strategy is the promotion of the Roma as a distinct ethnic minority and promotion of the Romani language and culture. Specific objectives include, among others, promotion of the use of the Romani language through the support of teaching Romani language in primary schools and the development of methodological and didactic materials and tools and projects granting support for teaching and research of the Romani language, as well as the preservation of the cultural heritage of the Roma and promotion of the research of Romani language, Roma culture and history, support of university Roma studies and the support of institutions such as the Museum of Romani culture in Brno or the World Roma festival Khamoro. The strategy also aims to create the conditions for good, objective information about the Roma minority, culture, history and current situation of the Roma traditions and opinions through the dissemination of information in the media and in educational programmes and subsidies for their development.

15. The specific aim is to ensure sustainable and dignified memory of the victims of the Roma Holocaust, which will be supported by the research of the Roma Holocaust and its popularization among the general public and a dialogue with experts and Roma civil society about the commemoration of the victims of the Holocaust. The Strategy's aim is not only to intensify the theme of the Roma Holocaust in public discourse, but also the intensive inclusion of the Roma in the discourse and the concept of co-decision on the topic of the Roma Holocaust and honouring its victims. The Government Council for Roma Community Affairs as an advisory body to the Government for Roma minorities, with half of its members comprising of the Roma, will participate in decisions on all major issues relating to the commemoration of the Roma Holocaust. These include the management and care of monuments in Lety u Písku and Hodonín u Kunštátu. In cooperation with the Council and with other relevant authorities and representatives of the Roma minority, steps will also be sought to address the situation on the pig farm in Lety u Písku and the possibility of termination of its operation.

16. The training of judges, prosecutors and police officers in the detection and prosecution of racist and extremist criminal activity is carried out in the Czech Republic in the long term. The Judicial Academy provides courses, training and seminars for judges, prosecutors and judicial staff, focusing on extremism, racism and xenophobia in the criminal justice system and beyond. In 2013, 13 workshops were organized, which were

[22] See Government Resolution No. 935 of December 11, 2013.

related to the issue of extremism. These training events were attended by 616 persons from the judiciary — particularly judges and prosecutors and judges' assistants and legal and judicial trainees. The representatives of the police, the Ministry of the Interior, the Probation and Mediation Service and other bodies that have experience with extremism were also able participate. The lecturers at educational events are judges, prosecutors, the Agency for Social Inclusion, representatives of the Police, the Ministry of the Interior, legal experts, academics and others. The Judicial Academy also prepares additional courses this year.[23]

17. The Police of the Czech Republic provides training mainly for specialists of the Criminal Investigation Police, who conduct their own investigation of extremist crimes. They are educated in the general issues of extremism and its detection and assessment and operative investigation activities in the environment of extremist groups. In 2013, a total of 40 people were trained. Special preparation concerns members of the anti-conflict teams in extremist gatherings. The issue of extremism is also included in educational programs for police schools and the Police Academy. It is incorporated into the framework educational programmes, school educational programmes and curricula of accredited study programmes according to individual types of police schools. The issue is also an integral part of training and specialization courses. Within the qualification courses, it is part of training modules "Service Conduct" (in the topic Organisation of the Service in Accordance with the Principles of Community Policing) and "Legal Aspects of Riot Police, Service Evaluation" (in the topic Current Issues of Criminal Law Practice). The specialization course for liaison officers for migration reflects the issue of combating racism in the topics "The Use of Social and Cultural Specifics of Ethnic Groups in Profiling" and "The Issues Related to Socio-cultural Environments of Selected States". Part of the specialized training course "Training of Specialists on the Issue of Extremism" is the module "Operative Investigation Activity in the Environment of Extremist Groups with the Use of an Informant".

18. In May 2013, the Minister of the Interior approved the updated Strategy of Police Activities in Relation to Minorities for 2013–2014, which continues to work on the adaptation of the Czech Police to the conditions of increasing social diversity and equips the police officers with corresponding social skills for working with minorities.[24] Since 2005 the Czech Police employees liaison officers for minorities, whose purpose is to actively participate in the transfer of law and justice in the specific environment of minorities, to strive to build mutual trust and communication with minorities, reduce the incidence of inter-ethnic conflicts and crime prevention. The Ministry of the Interior provides regular training for the liaison officers for minorities and other police officers who come into contact with members of minority groups while on duty. During training, emphasis is placed on the application of equal and fair attitude towards minorities and respect for minority differences. In 2014 interactive experiential training will be implemented for 240 police officers in the form of experiential education with a focus on personal development and an emphasis on education against prejudice.

19. The Czech law considered racist propaganda and racial attacks as crimes. The Criminal Code regulates offenses of violence against a group of people or an individual,[25] dangerous threats,[26] stalking,[27] defamation of nation, race, ethnic or other groups[28] and

[23] For example, seminars on racial and right-wing extremism and extremism in the European context.

[24] For example, training police officers in the specifics of minorities, implementation of a methodology, standards and evaluation of the policing of minorities.

[25] Criminal Code, § 352.

[26] Ibid., § 353.

[27] Ibid., § 354.

[28] Ibid., § 355.

inciting hatred against a group of persons or restriction of their rights and freedoms.[29] The most serious acts against national, ethnic, religious or other groups of persons are punishable as crimes against humanity such as genocide,[30] an attack against humanity,[31] apartheid and discrimination against groups of people,[32] persecution of citizens,[33] establishment, support and promotion of movements aimed at suppressing human rights and freedoms[34] and sympathizing with a movement aimed at suppressing human rights and freedoms.[35] For many crimes the racial motivation is directly stated in the law as so-called qualified elements of crime with harsher sentences. These are e.g. crimes of murder,[36] grievous bodily harm,[37] torture and other inhuman and cruel treatment,[38] deprivation and restriction of personal freedom,[39] abduction,[40] extortion,[41] damage of property[42] or abuse of official authority.[43] In addition to crimes aimed directly at punishment of racist attacks, for all other offenses the racist motivation presents an aggravating circumstance justifying the imposition of a harsher sentence to offenders.[44] This means that any offense, which was committed for racist or other similar motives, will be severely punished by the court, so as to express its exceptional despicability.

20. The Criminal Code allows a harsh and effective prosecution of racially motivated crimes against national and ethnic minorities. The victim's allegiance to a particular ethnic or other group may not be true, it suffices if the offender considers the victim a member of such minority and his offense is motivated by it. The bodies active in criminal proceedings focus on the problems associated with the investigation of racist and extremist crimes, e.g. while proving racial motivation of the perpetrator. During their supervision in cases of crimes committed with signs of racial, ethnic, religious and other hatred the prosecutors shall proceed with utmost care to ensure completion of all tasks necessary to establish the motives of the perpetrator, even if the motive is not an element of a crime.[45] In October 2009, the Supreme Public Prosecutor's Office issued a methodological guide on the issue of crimes related to extremism, which was sent to the prosecutors' offices and became part of the training of prosecutors.

21. In addition to the criminal prosecution, the Government presents the Concept for Combating Extremism every year and submits an annual report to Parliament on its fulfilment. The report describes the development of the extremist scene in the given year and the Concept contains measures for the next year. The Concept includes not only repressive measures, but particularly preventive measures to prevent the emergence and spread of extremism, including activities aimed at children and youth. The measures of the

[29] Ibid., § 356.
[30] Ibid., § 400.
[31] Ibid., § 401.
[32] Ibid., § 402.
[33] Ibid., § 413.
[34] Ibid., § 403.
[35] Ibid., § 404.
[36] Ibid., § 140.
[37] Ibid., § 145 and 146.
[38] Ibid., § 149.
[39] Ibid., § 170 and 171.
[40] Ibid., § 172.
[41] Ibid., § 175.
[42] Ibid., § 228.
[43] Ibid., § 329.
[44] Ibid., § 42 b).
[45] Art. 73 General Instruction of the Supreme Prosecutor No. 8/2009 on Criminal Procedure, as amended.

Concept include the above mentioned measures in the field of education of State authorities. Based on the Concept the riot police officers were trained to pass on knowledge related to extremism in order to prevent and monitor inter-ethnic conflicts, which could have the potential to draw interest of the extremist scene and subsequently cause demonstrations, especially in the context of the so-called socially excluded localities. The Collection of Selected Procedures in Investigation of Crime with Extremist Subtext should be completed this year, which will include specific steps for police work in most frequent situations with elements of extremism. Organizational measures were also applied within the police with the announced Extraordinary Measure of the Chief of Police EXTREMISM 2014. The regional police now contain working groups dealing with extremist crime. The groups also mandatorily include a specialist in extremism from the Regional Police Directorate. Expert opinions, judgments and decisions relating to extremism have been collected for the needs of the working groups.

22. The Ministry of the Interior has prepared two documents aimed at the perpetrators of extremist acts. The first of these was the "Analysis of Available Court Judgments of Perpetrators of Extremist, Racist and Xenophobic Violent Crimes". This analysis was followed by "Qualitative Description of Personality Psychology of Perpetrators of Extremist Racist and Xenophobic Crimes" the aim of which was to enrich the statistical data with the qualitative description of the personalities of these offenders. At the end of both materials was a recommendation for a better understanding of the crime.

23. One of the tasks of the Concept is to focus on crime with an extremist subtext on the Internet and social networks. From 1 August 2012, the Czech Police Hotline has been launched. This is an on-line form "Cybercrime Report", which is open to the public on the Police website. With the help of this form anyone can report abusive content and reprehensible activities on the Internet, including possible crimes and racist propaganda. From 1 August 2012 to 31 December 2013, 5,438 complaints were registered, of which the apparent criminal activity was found in 1,614 cases. 195 cases concerned activities with extremist subtext, namely 61 were suspected of the offense of incitement to hatred against a group of persons or to restrict their rights and freedoms. All cases are still under investigation.

24. A key regulation for crime victims is the newly adopted Act on Crime Victims.[46] The Act provides a comprehensive system of legal protection of crime victims and adjusts their position in criminal proceedings. The basic principle is that all State authorities and other entities (including e.g. the media) have a duty to respect the personality and dignity of victims, approach the victims in a polite and gentle manner and try to accommodate the victim as much as possible.[47] The Act provides, in particular these rights of victims:[48]

(a) The right to receive specialist aid in the form of psychological counselling, social counselling, provision of legal information, legal assistance and restorative programmes;

(b) The right to receive comprehensible information about their rights and obligations and to obtain help from the authorities and private entities;

(c) The right to privacy and protection against secondary victimization by law enforcement authorities through restrictions of the contact with the offender or special rules for the victim's interrogation and explanation;

(d) A statement by the victim on the impact of the crime on his or her life;

[46] Act No. 45/2013 Coll., with effect from 1 August 2013.

[47] § 3, paragraph 2, of the Act on Crime Victims.

[48] Section II of the Act on Crime Victims (§ 4-37).

(e) The right to financial assistance.

25. Assistance is provided by the Probation and Mediation Service and other bodies such as lawyers or non-governmental organizations that are accredited by the Ministry of Justice and therefore meet the technical and material conditions for the provision of assistance.[49] Assistance is provided free of charge to selected particularly vulnerable victims.[50] These victims are children, people with disabilities, victims of human trafficking and victims of crime against human dignity in sexual matters or crime that involved violence or threats of violence, if in the particular case exists an increased risk of causing secondary damage, particularly with regard to their age, gender, race, ethnicity, sexual orientation, religion, health status, intellectual maturity, communication ability, life situation or with respect to the relationship of the person suspected of committing a crime or reliance on this person.[51] Large numbers of victims of racist and extremist crimes will thus be included in the category of particularly vulnerable victims. The right to financial assistance to bridge the deteriorated social situation caused by the crime is granted to victims of bodily harm, survivors of crime victims who have lost a close person[52] or the person who provided them with sustenance, or victims of a crime against human dignity in sexual matters.[53] Financial assistance may reach 10,000–200,000 CZK according to the extent of the injury and the State may then claim this amount from the offender who has been convicted.

26. In addition to extending the protection of victims, the Act on Crime Victims implemented provisional measures in the Criminal Procedure Code. It is now possible within criminal proceedings to impose a ban on entry into a particular dwelling, on contact with certain persons, to remain in a specified place, etc.[54] Such measures also contribute to the protection of victims from offenders.

27. In 2013, selected experts from the regional police headquarters were educated in the issue of the Act on Crime Victims. These experts then conducted training within their regions. As of the effective date of the Act, all officers of the Czech Police were trained, including, e.g. the operating officers. The Czech Police prepared a methodology in connection with the Act on Crime Victims, which is available on the intranet site of the Department of General Crime of the Criminal Police and Investigation Service. This methodology serves to implement uniform police procedures when working with victims. In connection with the Act, existing forms were modified and new forms created, particularly the instructions for the injured party and basic information for crime victims. Both the methodology and the forms were presented to the Ministry of Justice and the Supreme Public Prosecutor's Office and then distributed to all courts and prosecution offices to ensure a uniform procedure of bodies active in criminal proceedings. The Czech Police provides victims with information on entities providing assistance to crime victims and also train personnel of these providers in order to unify the processes in criminal proceedings and establish closer cooperation.

[49] Section III of the Act on Crime Victims (§ 38–48).

[50] § 5 of the Act on Crime Victims.

[51] § 2, paragraph 4, of the Act on Crime Victims.

[52] Close person in this regard is a parent, spouse, registered partner, child or sibling of the deceased, if present at the time of his death they lived in the same household with the person.

[53] § 24, paragraph 1, of the Act on Crime Victims.

[54] § 88b et seq., Code of Criminal Procedure.

Information on the implementation of recommendation No. 11

28. While in its concluding observations from 2007 the Committee used the designation "involuntary or coercive sterilization", in its concluding observations from 2013 it uses, without further explanation, the term "forced sterilization" and speaks about women who were sterilized "forcibly". The Czech Republic is aware that, depending on the degree of non-compliance with the requirement of free and informed consent, it is possible to distinguish different forms of involuntary sterilization as is shown e.g. by the inter-agency statement of the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the Joint United Nations Programme on HIV/AIDS (UNAIDS), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) "Eliminating forced, coercive and otherwise involuntary sterilization" published in May 2014. A very limited number of cases, where the requirement of free and informed consent has not been fully complied with in the past, the Czech Republic designates as illegal sterilizations and did not consider it necessary to comment the different terminology used by United Nations treaty bodies. In light of the significant deflection from the former terminology in the existing concluding observations of the Committee, however, the Czech Republic considers it necessary to point out that with regard to the circumstances, under which non-compliance with the requirement of free and informed consent occurred in the past, the use of the term "forced" and "forcibly" which imply the use of force, is not justified in this case.

29. In its 2005 report, the Public Defender of Rights noted that in cases of infringement of the rights of patients by performing sterilizations without their consent, the party responsible for the caused harm is the doctor, who failed to comply with legal regulations concerning sterilizations. The Defender therefore concluded that in these cases the just solution is that the patient shall demand compensation for caused harm via a civil court action. A case of judicial redress of victims of sterilization without the free and informed consent from 2000 shows that it was an effective way to obtain compensation for an illegal sterilization.[55] Victims of forced sterilization therefore had an effective remedy at their disposal in accordance with the international obligations of the Czech Republic. The Government cannot be held responsible for the fact that not all victims have used this option. Nevertheless, the current Government has decided to present a special law on compensation for victims of illegal sterilization; however this will only be ex gratia compensation. The law should regulate the claims of the individual victims as well as the functioning of the redress mechanism so as it leads to compensation for victims and satisfaction of their claims. By the end of 2014, the Government should be presented with a legislative proposal of this law and by the end of 2015 with the law itself.

30. The proposed law envisages comprehensive compensation for victims of illegal sterilization and satisfaction of their claims by the State. Victims therefore no longer need to file civil actions against a healthcare facility, where the illegal sterilization was

[55] Further information on this and other cases are given in the answers of the Czech Republic to questions from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on minority issues, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Special Rapporteur on violence against women, its causes and consequences, and the Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice), available from https://spdb.ohchr.org/hrdb/24th/Czech_Rep_24.05.13_(2.2013).pdf.

performed. The redress mechanism will also provide the applicants with the necessary information and advice regarding their claims.

31. Free legal assistance in the Czech Republic is currently provided by the courts in individual cases. Participants in need may, in the absence of funds, request a free appointment of an attorney in civil[56] or criminal proceedings,[57] whose costs are paid by the State, and they can also ask for exemption from court fees.[58] Apart from non-governmental organizations, general legal assistance is also provided by the Czech Bar Association.[59] The current Government is also preparing a new comprehensive system of legal aid provided by the State, which should allow access to legal assistance not only in judicial or administrative proceedings, but also to general legal advice prior to litigation, so that everyone can solve their problems out of court. The system should be submitted to the Government by the end of next year.

32. The prerequisite to initiate criminal prosecution in any case is to determine the relevant facts proving that the particular deed was committed, that it was a criminal offense and that the offender is known.[60] Another condition is that the time limitation for criminal prosecution has not elapsed.[61] If these conditions are not met, the prosecution cannot be started at all and if a petition had been submitted to start the prosecution, the prosecutor or police postpone the case.[62] The injured party may file a complaint with suspensory effect against this postponement decision.[63] If the prosecution has been started, but it becomes clear during the prosecution that the deed is not a criminal offense or there is insufficient proof that the act was committed by the accused, the prosecution must also be stopped.[64] The injured party may file a complaint with suspensory effect against this decision to stop the prosecution.[65] Criminal proceedings initiated on the basis of the 58 cases examined by the Defender were postponed in the majority of the cases in accordance with these provisions, as it was found that no crimes were committed. In 4 cases the reason was limitation of time, i.e. the expiry of the period during which it is possible to initiate prosecution. It should be noted that, as in other cases where improper use of health services does not constitute a criminal offense, any affected women may file an action in civil proceedings for compensation for damage caused by illegal sterilizations. The European Court of Human Rights in its case law[66] recognized under the procedural limb of article 3 of the Convention a civil action as an effective remedy in similar cases.

33. The regulation of sterilizations in the Act on Specific Health Services provides protection of the rights of the patient and stipulates a number of conditions for the providers of medical services regarding sterilizations, which they are required to comply with. It is legally possible to perform sterilizations both for health reasons and for other than health reasons. Sterilization due to health reasons may be performed on a patient older than 18 years, provided that he has given his written consent.[67] Sterilization for other than medical

[56] Code of Civil Procedure, § 30.
[57] § 51a of the Criminal Procedure Code.
[58] Code of Civil Procedure § 138.
[59] § 18, paragraph 2, of the Attorney Act.
[60] § 169, paragraph 1, of the Criminal Procedure Code.
[61] § 34n Criminal Code. The period of limitation is dependent on the severity of the crime 3–20 years.
[62] § 159a, paragraph 1, of the Criminal Procedure Code.
[63] § 159a, paragraph 7, of the Criminal Procedure Code.
[64] § 172, paragraph 1, of the Criminal Procedure Code.
[65] § 172, paragraph 3, of the Criminal Procedure Code.
[66] For example, judgment of 8 November 2011 in case *V.C.* v. *Slovakia*, application No. 18968/07, Reports of Judgments and Decisions, 2011.
[67] § 13, paragraph 1, of the Act on Specific Health Services.

reasons may be performed on a patient older than 21 years on the basis of his written request, unless it is prevented by serious health reasons.[68] Sterilization of minor patients and patients with limited legal capacity who are not capable to assess the consequences of the procedure is only possible due to health reasons and with the written consent of their legal representatives, a positive opinion of an independent expert commission and a court approval.[69] By law, the commission must have at least five members, including a clinical psychologist and a lawyer, while at least four members shall not be in any relationship to the health service provider that shall perform the sterilization.[70] The patient, as well as his legal representative, is always invited to attend the committee meetings.[71] The commission is obliged to inform the patient about the nature of the medical procedure, its permanent consequences and the risks involved and when informing the patient it shall take into account his intellectual maturity. The commission must also verify that the patient and his legal representative fully understand this information.[72] All procedures are recorded in the patient's medical records.[73] Before sterilization the attending physician must provide the patient with information about the nature of the medical procedure, its permanent consequences and possible risks. The provision of information is recorded in the medical records and signed by the attending physician, the patient and one or more witnesses. The period between the provision of the information and the granting of consent must be at least 7 days for sterilizations due to health reasons and at least 14 days for sterilizations due to other reasons.[74] Immediately prior to the procedure the patient or his legal representative must give their renewed consent to its execution.[75]

34. The provider of health services is required to meet all these obligations; otherwise he is violating the law and is risking sanctions. Violation of these obligations is considered an administrative offense,[76] punishable by a fine of up to 300,000 CZK.[77] Similarly, the violation of medical records rules[78] is also an administrative offense, which may also be punished by a fine of up to 300,000 CZK.[79] Administrative offenses are handled by regional authorities which granted the authorization to provide health services to the given providers. Supervision of fulfilling the obligations of healthcare providers is conducted by the administrative body which granted the authorization to provide health services to the given provider, which is most often the regional authority or the Ministry of Health or another ministry.[80] Supervisory authorities monitor compliance with the obligations and conditions for the provision of health services or activities associated with health services.[81] Supervisory authorities are entitled to impose corrective measures in order to eliminate the deficiencies within set time limits, monitor their fulfilment and require written reports on the implementation of the remedial measures.[82] Inspections carried out so far regarding the performing of sterilization showed that healthcare providers fulfil all their obligations properly.

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[68] § 14 of the Act on Specific Health Services.
[69] § 13, paragraph 2, of the Act on Specific Health Services.
[70] § 13, paragraphs 3 and 4, of the Act on Specific Health Services.
[71] § 13, paragraph 6, of the Act on Specific Health Services.
[72] Ibid.
[73] Ibid.
[74] § 15, paragraph 1, of the Act on Specific Health Services.
[75] § 15, paragraph 1, of the Act on Specific Health Services.
[76] § 90, paragraph 1 point. a)-e), of the Act on Specific Health Services.
[77] § 90, paragraph 7 point. c) and d), of the Act on Specific Health Services.
[78] § 117, paragraph 3 point. e)-j), of the Act on Specific Health Services.
[79] § 117, paragraph 3 point. c)-e), of the Act on Specific Health Services.
[80] § 107, paragraph 1, of the Act on Specific Health Services.
[81] § 108, paragraph 1, of the Act on Specific Health Services.
[82] § 109 of the Act on Specific Health Services.

35. In the Czech Republic, the health care providers do not collect data on ethnic origin, only the nationality of patients is monitored. Health services are provided to patients regardless of gender, race, religion, ethnic origin, sexual orientation, and other similar characteristics.

Information on the implementation of recommendation No. 13 (a)

36. The regulation of legal capacity of persons with disabilities in the Czech Republic has undergone significant changes. The new Civil Code, effective from 1 January 2014, does not allow a person to be fully deprived of legal capacity, only to be limited in relation to specific legal actions and only if there is a risk of serious harm for this person and another milder and less limiting measure would not suffice.[83] Restrictions must be in the interests of the person and must fully recognize his rights and personality. The specific rate of limitation must consider the extent and degree of disability of the person to handle his/her own affairs.[84] The actual rate of limitation is decided by the court based on the above mentioned principles.[85] When deciding on the restriction of legal capacity, the court must ascertain and take into account the opinion of the person and must use adequate means of communication.[86] The court may limit the legal capacity in connection with a certain issue for the time necessary for its settlement, or for a certain period of time. However, such restrictions may apply for no more than three years and after the expiration of this time limit its legal effects disappear and the person recovers full legal capacity.[87] The decision to limit the legal capacity does not deprive the person of his right to independent legal actions in the affairs of everyday life.[88] If changes occur in the health condition of the person, which could affect his/her legal capacity, the court alters or abolishes its decision without delay, also ex officio.[89]

37. A person with limited legal capacity is appointed a guardian, whose task is to monitor and protect the person's interests and fulfil his/her rights through legal actions in the person's name and on the person's behalf where the person does not have the capacity due to restrictions.[90] However, if the incapacitated person acts alone in these cases, his/her conduct is valid if it does not cause harm to the person or if the guardian subsequently approved these actions.[91] The guardian obviously has a general duty to act only in the interests of his/her ward. When choosing a guardian, the court considers the person's wishes, opinions and needs and opinions of close persons.[92] A person cannot be appointed as guardian if his/her interests are in conflict with the interests of the person under guardianship or if he/she is an operator of a facility where the ward resides or which provides service to the ward, or a person who is dependent on such facilities, which serves

[83] § 55, paragraph 2, of the Civil Code.
[84] § 55, paragraph 1, of the Civil Code.
[85] § 57, paragraph 1, of the Civil Code.
[86] § 56, paragraph 2, of the Civil Code. Related to this is that, according to § 57, paragraph 2, of the Civil Code, legal capacity cannot be limited because the person has trouble with communication. Such a person must be given another opportunity to express and exercise their opinions and wishes.
[87] § 59 of the Civil Code. If a proceeding on time limit extension is started during this period, the legal effects of the original decision last until the issue a new decision, however no longer than one year.
[88] § 64 of the Civil Code.
[89] § 60 of the Civil Code.
[90] § 62 and § 463, paragraph 1, and § 465, paragraph 1, of the Civil Code.
[91] § 65 of the Civil Code. The action may be additionally approved by the person herself, when restored to full legal capacity.
[92] § 62 and § 471, paragraph 1, of the Civil Code.

to eliminate the most serious conflicts of interest in the exercise of guardianship.[93] If a conflict of interests still occurs, the court appoints a guardian ad litem.[94] The guardian is obliged to maintain regular contact with the ward in an appropriate manner and to the extent needed, to show a genuine interest in his/her ward and care for the fulfilment of the ward's rights and protect his/her interests.[95] While performing his/her duties, the guardian fulfils the ward's statements, follows his/her views and systematically takes them into account and arranges the ward's affairs in accordance with them. If this is not possible, the guardian proceeds according to the interests of the ward.[96] When deciding on the ward's matters the guardian always comprehensibly explains the nature and consequences of the decisions.[97] The guardian cannot act in the ward's stead in purely personal matters such as marriage, parenting responsibilities and inheritance rights.[98] If the guardian manages the ward's assets, he/she may only act in routine matters and any other actions require the court's approval.[99] Many actions of the guardian are also subject to the consent of the guardianship board composed of persons related to the ward and his/her friends, who decide on the fundamental steps in the life of the ward[100] and supervise the guardian's activities.[101] If this board is not established, the court shall exercise its powers.[102] The court may also recall the guardian, if he/she does not fulfil his/her obligations.[103]

38. All forms of legal capacity limitation are decided by the court. The proposal to limit the legal capacity must contain all relevant information including medical reports on the mental condition of the person and must justify why it is not possible to use milder and less restrictive measures.[104] The court appoints a guardian to the person under review, but he/she may choose his/her own agent without his/her consent.[105] During the proceedings, the court shall hear the person under review, experts, depending on the circumstances also the person's attending physician, his/her guardian and possibly presents other appropriate evidence.[106] If it is not possible to question the person under review at all or without injury to his/her health, it may be forgone, but the court must always see the person under review and accommodate any request for a hearing.[107] The court must always inform the person of his/her procedural rights.[108] The court is always obliged to consider in its decision whether it is possible, taking into account the person's health and abilities, to achieve the protection of the person's rights with other less invasive means, which may possibly be used immediately.[109] If the court then decides on the restriction of legal capacity, it shall stipulate the duration and scope in its judgment.[110] The limited person must be properly and

[93] § 63 of the Civil Code.
[94] § 460 of the Civil Code.
[95] § 466, paragraph 1, of the Civil Code.
[96] § 467, paragraph 1, of the Civil Code.
[97] § 466, paragraph 2, of the Civil Code.
[98] § 458 of the Civil Code.
[99] § 461, paragraph 1, of the Civil Code.
[100] For example, placement in a health or social nursing facilities, damage to physical integrity or significant property rights negotiations.
[101] § 472 et seq., Civil Code.
[102] § 482, paragraph 1 of the Civil Code.
[103] § 463, paragraph 2 of the Civil Code.
[104] § 35, paragraph 2, of the Act on Special Judicial Proceedings.
[105] § 37, paragraph 1, of the Act on Special Judicial Proceedings.
[106] § 38, paragraph 1, of the Act on Special Judicial Proceedings.
[107] § 38, paragraph 2, of the Act on Special Judicial Proceedings.
[108] § 37, paragraph 1, of the Act on Special Judicial Proceedings.
[109] § 39 of the Act on Special Judicial Proceedings.
[110] § 40, paragraph 2, of the special judicial proceedings.

comprehensibly informed about the limitation as well as its reasons.[111] If the grounds for limitation of legal capacity no longer apply, the court alters or abolishes its decision of its own motion or based on petition by the limited person[112] or another close person, who may submit this petition at any time.[113] Limitation of legal capacity may be effective up to a maximum of three years.[114] Persons who under the previous legislation have been completely deprived of legal capacity are considered as person with limited legal capacity, according to the new Civil Code.[115] All cases of legal capacity limitation must then be reviewed by the court within 3 years from the effective date of the new Civil Code, otherwise the limitation loses force and people gain full legal capacity.[116] The costs of the proceedings are borne by the State[117] and the proceedings shall be exempt from court fees.[118] A person with limited legal capacity or whose legal capacity is restricted in management may benefit from the legal assistance of an attorney[119] or any other natural person[120] as his/her representative in the proceedings.[121] The cost of this representation may in justified cases be borne by the State, similarly to the above mentioned case of victims of illegal sterilization. Persons with limited legal capacity will also be able to take advantage of the system of free legal aid, which is currently under preparation.

39. In accordance with the Convention on the Rights of Persons with Disabilities, the new Civil Code also transfers from a model of substitute decision-making to the model of support in decision-making. In addition to intervention to the legal capacity in the form of its limitation it tries to implement procedures for persons with disabilities to help them make decisions and also act in cases where their health condition does not fully allow it. These support measures are intended to serve as a substitute for interventions to the legal capacity of persons in less serious cases and allow them to continue to act in accordance with their will and beliefs. A preliminary statement shall enable persons who expect a limitation of their legal capacity to act and stipulate how and by whom their affairs shall be managed in the future.[122] The support in decision-making has the form of a court-approved agreement where one person as the supporter commits to the other person that he or she will be, based on the person's approval, present at the person's legal actions, that he or she will provide the necessary information and communication, and that he or she will provide assistance with counsel.[123] Assistance in decision-making is a form of counselling and help with various activities. However, the supported person remains the decision-making and acting party. When carrying out his/her duties, the supporter acts in accordance with the decisions of the supported person and shall not improperly influence his/her decisions and jeopardize his/her interests.[124] The assistance agreement is approved by the court,[125] which

[111] § 41 of the special judicial proceedings.

[112] § 35, paragraph 3, of the Act on Special Judicial Proceedings. However, if a court repeatedly denied the petition of the person with limited legal capacity to restore his/her full legal capacity and it cannot be reasonably expected that the person's condition will improve, the court may decide it that this person is not eligible for this right for a certain period of time. This period may not exceed six months.

[113] § 42 of the Act on Special Judicial Proceedings.

[114] § 59 of the Civil Code.

[115] § 3032, paragraph 1, of the Civil Code.

[116] § 3033, paragraph 1, of the Civil Code.

[117] § 43, paragraph 1, of the Act on Special Judicial Proceedings.

[118] § 11, paragraph 1 point. f), of the Act on Court Fees.

[119] § 24 and 25 of the Civil Procedure Code.

[120] § 27 of the Civil Procedure Code.

[121] § 37, paragraph 1, of the Act on Special Judicial Proceedings.

[122] § 38 et seq., Civil Code.

[123] § 46, paragraph 1, of the Civil Code.

[124] § 47 of the Civil Code.

also oversees the proper exercise of the supporter's duties and can recall the supporter.[126] Representation by a household member is a less formal analogy to guardianship, where the person that is prevented from independent legal actions by a mental disorder is represented by a selected member of the person's household with his/her informed consent.[127] The person retains his/her full legal capacity, but with his/her consent, voluntarily transfers the power of his/her legal capacity to a chosen person. This person is then entitled to act on behalf of the represented person in the usual matters relevant to his/her living conditions. The representative is not entitled to give consent to the interference with mental or physical integrity of the represented person with permanent consequences.[128] The representative may dispose with the revenues of the represented person to the extent necessary for the handling of affairs of daily life corresponding to the living conditions of the represented person.[129] In his/her actions and decision-making, the representative shall ensure the protection of the interests of the represented person and the fulfilment of his/her rights.[130] The institute therefore represents the transfer of decision-making powers to another person, but unlike formal guardianship it allows care for the rights and interests of the person directly in his/her natural environment and by the people the person knows and trusts, thus further intensifying the social inclusion of the given person. A representation must again be approved by the court, to ensure proper protection of the rights of the represented person.[131]

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[125] § 46, paragraph 2, of the Civil Code.

[126] § 48 of the Civil Code.

[127] § 49, paragraph 1, of the Civil Code. A member of the household in this regard is a descendant, ancestor, sibling, spouse or partner, or a person who has lived with the represented person in a common household for at least three years before the emergence of representation.

[128] § 52, paragraph 1, of the Civil Code.

[129] § 52, paragraph 2, of the Civil Code. The funds in the represented person's account can only be disposed of to the extent not exceeding the monthly subsistence level of the individual.

[130] § 51 of the Civil Code.

[131] § 50 of the Civil Code.